

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1549 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

GUJARAT STATE FERTILIZERS CO. LTD.

Versus

JAYABEN M THAKKAR

Appearance:

MR KAMAL TRIVEDI FOR M/S TRIVEDI & GUPTA for Petitioner
MR SD PATEL for Respondent No. 1
MR YN RAVANI for Respondent No. 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 07/09/98

ORAL JUDGEMENT

This revision under section 115 of the Code of Civil Procedure has been filed challenging the order of the lower Appellate Court setting aside the order of the Trial Court granting ad-interim injunction in favour of the revisionist.

The brief facts are that in a prohibited area the revisionist Gujarat State Fertilizers Company Ltd., Fertilizer Nagar, Baroda granted temporary permit viz. licence in favour of one A.P.Thakkar on 6.12.1968 to run betel shop in prohibited area on payment of monthly licence fee of Rs.45/-. On his request licence was transferred in favour of respondent No.1 in respect of the same shop for running betel shop on 14.7.1975. This, licence was to remain valid up to 31.12.1975 and thereafter the licence was renewed from time to time and it ultimately expired on 31.3.1993. Thereafter, neither the licence was renewed nor any application for renewal of licence by Smt.Jayaben M.Thakkar is pending. Her son, respondent No.2 moved an application to respondent No.3 for granting STD PCO connection in the said premises. Upon this move of the respondent No.2, a suit for permanent injunction was filed by the revisionist in which ad-interim injunction order was sought in the Trial Court seeking restraint order against the respondents.

Trial Court granted exparte ad-interim order which was confirmed after hearing both the sides on 8.4.1993. Thereafter, the respondents preferred an appeal. The appeal was allowed and the order of the Trial Court granting injunction was set aside. Hence this revision.

Having heard learned Counsel for the revisionist and examining the order of the Trial Court and the appellate Court and also relying upon the material on record, I am of the view that the lower Appellate Court has acted with material irregularity as well as illegality in setting aside the order of the Trial Court. Reasonings given by the lower Appellate Court are altogether unacceptable and based on mere surmises and conjectures.

The first reasoning of the lower Appellate Court that there is no negative covenant in the licence deed, hence, the respondent No.2 cannot be restrained from obtaining STD PCO connection in the premises is hardly in accordance with law and it is totally illegal. In the first place, it may be mentioned that the licence was lastly granted to the respondent No.1 and not to the respondent No.2 at any point of time. Thus, the respondent No.2 had no right of entry in pursuance of the licence granted to the respondent No.1. The terms and conditions of the licence are clear. The licence was granted only for running a betel shop. If positive covenant is there and particular purpose is specified in the licence deed viz. purpose for which the licence was

granted, it cannot be said that in the absence of negative covenant no restraint order can be issued. This is not the manner in which a document is to be interpreted. If the document is apparently unambiguous it does not require any interpretation. The Appellate Court could not have held that in the absence of negative covenant the respondent No.2, who was not even licensee, has right to use the premises for any other business purpose. There was no necessity for incorporating negative clause in the licence deed or in the terms and conditions. The term is quite clear that licence was granted only for running betel shop and not for carrying on any other business. This interpretation is possible in as much as the purpose of the licence was for running betel shop.

It may also be mentioned that the respondent No.2 was never the licensee in the suit premises. As such he could not have applied for telephone (STD PCO) connection. It is equally apparent from the record that no such application for STD PCO connection was moved by respondent No.1 to respondent No.3. A person who had not obtained licence was hardly authorised or entitled to apply for STD PCO connection in the shop which was given on licence to the respondent No.1 alone. In this view of the matter the respondent No.2 has no prima facie case to obtain STD PCO connection in the suit shop and this in turn furnishes prima facie case for the revisionist to obtain ad-interim injunction against respondent No.2 as well as against respondent No.1 so also the respondent No.3 who is General Manager, Telecommunication in granting STD PCO connection in the disputed shop.

Likewise after 31.3.1993 the position has changed. Even the respondent No.1 is not now licensee in the disputed premises. Consequently, her son has no authority express or implied to apply for STD PCO connection in the suit premises.

It may also be mentioned that the terms and conditions which were accepted by the licensee on the back of the permit also do not indicate that licensee had option to use the disputed shop for any other business except the betel shop. On this ground also neither the respondent No.1 nor the respondent No.2 were authorised to obtain STD PCO connection in the suit premises.

It is equally pertinent to mention that the shop is situated in prohibited and restricted area. Entry of public in such area has to be prevented. It is observed by the lower Appellate Court that security guard

generally checks all persons entering in such area, hence, there is no threat to the security of the restricted area. This is however, no ground for setting aside the injunction order granted by the Trial Court. The lower Appellate Court on irrelevant considerations and untenable reasonings has set aside the order of the Trial Court. In my opinion, the revisionist successfully established prima facie case that neither the respondent No.1 nor the respondent No.2 has any right to obtain STD PCO connection from the respondent No.3 in the suit premises. If this is so, then the next two questions have also to be answered in favour of the revisionist. Balance of convenience lies in favour of the revisionist in as much as unauthorised person whose licence stood revoked under the terms and conditions of licence and also on 31.3.1993 should not be permitted to stay in the premises or to use the premises for the purpose other than that for which the licence was granted. Hence, the respondents Nos. 1 and 2 cannot be permitted to obtain STD PCO connection in the disputed premises.

Irreparable loss and injury would be caused to the revisionist in as much as if injunction is refused unauthorised occupants may use the premises to their liking to the greatest inconvenience and disadvantage of the revisionist. The respondents No. 1 and 2 cannot be permitted to occupy the premises unauthorisedly after expiry of licence.

For the reasons stated above it is manifest that all the three conditions for getting temporary injunction were made out by the revisionist. The Trial Court was therefore justified in granting ad-interim injunction during the pendency of the suit and as a consequence thereof the lower Appellate Court fell in manifest error of law in reversing the order of the Trial Court. The order of the lower Appellate Court runs contrary to law and also in breach of the provisions of law. As such the revision has to be allowed and is hereby allowed. The order of the lower Appellate Court is set aside and that of the Trial Court dated 8.4.1993 is restored. No order as to cost.

Sd/-

(D.C.Srivastava, J.)

m.m.bhatt